

NICOLA T. HANNA
United States Attorney
PATRICK R. FITZGERALD
Assistant United States Attorney
Chief, National Security Division
JUDITH A. HEINZ (Cal. Bar No. 176264)
Assistant United States Attorney
Senior Litigation Counsel, National Security Division
JAMES C. HUGHES (Cal. Bar No. 263878)
Assistant United States Attorney
Tax Division
MELANIE SARTORIS (Cal. Bar No. 217560)
WILLIAM M. ROLLINS (Cal. Bar No. 287007)
Assistant United States Attorneys
Terrorism and Export Crimes Section
KHALDOUN SHOBAKI (Cal. Bar No. 232864)
Assistant United States Attorney
Cyber & Intellectual Property Crimes Section
1500 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-7280/5615/7407/0759
Facsimile: (213) 894-2927
E-mail: judith.heinz@usdoj.gov
james.hughes2@usdoj.gov
melanie.sartoris@usdoj.gov
william.rollins@usdoj.gov
khalldoun.shobaki@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

YI-CHI SHIH,
aka "Yichi Shih,"
aka "Yuqi Shi," et al,

Defendants.

No. CR 18-50(B)-JAK

GOVERNMENT'S REPLY TO DEFENDANT'S
OPPOSITION TO GOVERNMENT'S MOTION
IN LIMINE NO. 1 FOR ORDER
PRECLUDING CHALLENGE TO VALIDITY
OF ENTITY LIST DESIGNATIONS

Hearing Date: April 4, 2019
Hearing Time: 8:30 a.m.
Location: Courtroom of the
Hon. John A.
Kronstadt

Plaintiff United States of America, by and through its counsel
of record, the United States Attorney for the Central District of

1 California and Assistant United States Attorneys Judith A. Heinz,
2 James C. Hughes, Melanie Sartoris, William M. Rollins, and Khaldoun
3 Shobaki, hereby replies to defendant Yi-Chi Shih's opposition to the
4 government's motion in limine no. 1 for an order precluding defendant
5 Yi-Chi Shih from challenging the validity of the Entity List
6 designations alleged in the Second Superseding Indictment.

7 This reply is based upon the attached memorandum of points and
8 authorities, the files and records in this case, and such further
9 evidence and argument as the Court may permit.

10 Dated: March 21, 2019

Respectfully submitted,

11 NICOLA T. HANNA
United States Attorney

12 PATRICK R. FITZGERALD
13 Assistant United States Attorney
14 Chief, National Security Division

15 /s/ Judith A. Heinz

16 JUDITH A. HEINZ
17 JAMES C. HUGHES
18 MELANIE SARTORIS
WILLIAM M. ROLLINS
KHALDOUN SHOBAKI
Assistant United States Attorney

19 Attorneys for Plaintiff
20 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Defendant Yi-Chi Shih ("defendant") disputes that the Department of Commerce, Bureau of Industry and Security ("BIS") properly placed on its Entity List four companies:

Chengdu Gastone Technology Co., Ltd. ("CGTC");

Qing'an International Trading Co., Inc. ("QTC");

China Electronics Technology Group Corporation 29 Research Institute, aka China Southwest Electronic Equipment Research Institute, aka Chengdu SIWEI Electronics Company ("CETC 29"); and

Tian Hang Yang Pu Technology Investment Ltd. Co. ("Tian Hang"). (Dkt. 329, at 1:10-11.)

Although defendant states he will not challenge the *fact* of these Entity List placements at trial, he affirmatively states throughout his opposition that he disputes the validity of the placements. (*Id.* at 1:17-18, 5 n.3.) Therefore, because defendant has never stated that he will not dispute the validity of the Entity List placements at trial, the issue presented in the government's motion in limine no. 1 is not, as defendant contends, moot (*id.* at 1), and the Court should grant the government's motion.

II. Government's Motion in Limine #1 is Not Moot

"A motion in limine is a procedural mechanism to limit in advance testimony or evidence in a particular area." United States v. Heller, 551 F.3d 1108, 1111 (9th Cir. 2009). The government's motion in limine #1, which seeks to preclude defendant from challenging the validity of the Entity List designations, is not moot because defendant states he disputes the *validity* of the Entity List placements -- exactly the issue presented by the government in its

1 motion. Defendant's contention that the case law cited in the
2 government's motion is inapposite is equally meritless. Further,
3 defendant's concession that he will not dispute the *fact* of the
4 Entity List placements cannot render the issue moot here because he
5 continues to dispute the *validity* of the Entity List placements.

6 Contreras v. City of Los Angeles et al., 2012 WL 12893417 (C.D.
7 Cal. Sept. 11, 2012) upon which defendant relies, provides no
8 support. In Contreras, the district court in a civil case denied as
9 moot a defense motion in limine seeking to preclude plaintiff from
10 playing a video, after plaintiff informed the district court it would
11 not seek to play the video. Id. at *6. In contrast, here, the
12 government is entitled to present, and intends to present, evidence
13 that BIS placed CGTC, QTC, CETC 29, and Tian Hung on the Entity List
14 and why it did so (introducing documents already produced in
15 discovery). Thus, Contreras is not applicable.

16 Although defendant continues to dispute the validity of the
17 Entity List placements, neither he, nor anyone else, has challenged
18 the placements in the appropriate proceedings. As explained in the
19 government's motion, the Entity List placement process and the
20 Administrative Procedure Act offer defendant and his coconspirators
21 multiple ways to challenge the validity of the placements, yet no one
22 has. Defendant's complaints about the validity of the process should
23 therefore be rejected.¹

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25
26 ¹ Defendant's reference to the parties' dispute over Classified
27 Information Procedures Act ("CIPA") procedures (Dkt. 329, at 5 n.3)
28 is a red herring. The government has respectfully disagreed that the
claim of privilege declaration under CIPA must be executed by the
"head of the department." Defendant's suggestion that the Court
infer from this respectful disagreement that the Entity List
placements were procedurally flawed is baseless.

1 **III. The Government Is Entitled to Present Evidence of the Entity**
2 **List Placements**

3 The government's motion in limine #1 seeks only to preclude
4 defendant from challenging the validity of the Entity List placements
5 in this criminal proceeding. Defendant nevertheless repeats in his
6 opposition some of the arguments he made in his own motion in limine
7 #5, in which he seeks to preclude evidence of the Entity List
8 placements. The government has addressed many of these arguments in
9 its opposition to defendant's motion in limine #5, and here,
10 addresses only defendant's Rule 403 argument, which he has not raised
11 previously.

12 Relevant evidence is admissible unless barred by the
13 Constitution, a federal statute, a federal rule of evidence, or other
14 rules prescribed by the Supreme Court. Fed. R. Evid. 402. Evidence
15 is relevant if it has any tendency to make a fact more or less
16 probable than it would be without the evidence, and the fact is of
17 consequence in determining the action. Fed. R. Evid. 401. The fact
18 of the Entity List placements, the criteria for those placements, the
19 consequences of those placements, and defendant's knowledge of the
20 placements, the criteria, and the consequences, are facts "of
21 consequence in determining the action" because they are part of the
22 proof that defendant knowingly and willfully conspired to export
23 items from the United States in violation of IEEPA. Evidence having
24 any tendency to make these facts more probable than not is therefore
25 admissible.

26 Defendant argues the Court should exclude this evidence because
27 his "intention not to challenge the fact of Entity placement renders
28 any probative value of the evidence so slight that it is outweighed

1 by the unfair prejudice that would result." (Dkt. 329, at 3:24-26.)
2 A court may exclude relevant evidence only if its probative value is
3 substantially outweighed by, among other factors, a danger of unfair
4 prejudice. Fed. R. Evid. 403. "Unfair" prejudice under Rule 403
5 "means an undue tendency to suggest decision on an improper basis,
6 commonly, though not necessarily, an emotional one." Fed. R. Evid.
7 403 Commentary. "[Rule] 403 favors admissibility," United States v.
8 Hankey, 203 F.3d 1160, 1172 (9th Cir. 2000), and excluding evidence
9 under Rule 403 is an "extraordinary remedy to be used sparingly
10 because it permits the trial court to exclude otherwise relevant
11 evidence." United States v. Patterson, 819 F.2d 1495, 1505 (9th Cir.
12 1987). See also Dkt. 338 (Gov't Opp'n Def. Mot. #6), at 1-3.

13 Defendant's reliance on Old Chief v. United States, 519 U.S. 172
14 (1997) is misplaced. In Old Chief, the Supreme Court held,
15 explicitly limiting its holding "to cases involving proof of felon
16 status," that "a district court abuses its discretion" when it
17 refuses to permit a defendant to stipulate to the fact of a prior
18 conviction "when the name or nature of the prior offense raises the
19 risk of a verdict tainted by improper considerations, and when the
20 purpose of the evidence is solely to prove the element of prior
21 conviction." Id. at 174 and n.7. This case does not involve proof
22 of felon status; thus, Old Chief does not apply here. Moreover, the
23 Supreme Court instructed in Old Chief that "a defendant's Rule 403
24 objection offering to concede a point generally cannot prevail over
25 the Government's choice to offer evidence showing guilt and all the
26 circumstances surrounding the offense." Id. at 183 and n.7. As the
27 Supreme Court explained further:
28

1 [T]he accepted rule that the prosecution is entitled to
2 prove its case free from any defendant's option to
3 stipulate the evidence away rests on good sense. A
4 syllogism is not a story, and a naked proposition in a
courtroom may be no match for the robust evidence that
would be used to prove it.

5 Id. at 189. The Ninth Circuit, in United States v. Allen, 341 F.3d
6 870 (9th Cir. 2003), agreed, stating:

7 In Old Chief, the Court made clear that in cases in
8 which the defendant's felon status is not at issue, then
9 "the prosecutor's choice [of what evidence to produce at
10 trial] will generally survive a Rule 403 analysis when a
11 defendant seeks to force the substitution of an admission
for evidence creating a coherent narrative of his thoughts
and actions in perpetrating the offense for which he is
being tried."

12 Id. at 888 (citation omitted); see also United States v. Rojas-
13 Pedroza, 716 F.3d 1253, 1271 (9th Cir. 2013) (citing Old Chief as
14 "holding that as a general rule, 'the prosecution is entitled to
15 prove its case by evidence of its own choice.'"). Therefore, to
16 carry its burden of proving beyond a reasonable doubt that defendant
17 knowingly and willfully conspired with others to export items from
18 the United States to CGTC without having first obtained the required
19 licenses from the DOC, the government is entitled to introduce its
20 evidence to prove (1) a license from the DOC was required to export
21 an item from the United States to CGTC; and (2) defendant acted
22 knowingly and willfully -- that is, with knowledge that his conduct
23 was unlawful.

24 IV. CONCLUSION

25 For the foregoing reasons, the government respectfully requests
26 that this Court GRANT the government's motion in limine #1 to
27 preclude defendant from challenging at trial the validity of the
28 placement of CGTC, QTC, CETC 29, and Tian Hang on the Entity List.